

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MALCARNE CONTRACTING INC.,

Plaintiff,

-against-

PROGRESSIVE CAS. INS. CO.,

Defendant.

24-CV-04244 (MMG)

**ORDER**

MARGARET M. GARNETT, United States District Judge:

The Court is in receipt of Third-Party Plaintiff Progressive Casualty Insurance Company's ("Progressive") motion for default judgment against Third-Party Defendants Eden General Construction, Inc. ("Eden") and Sidewalk Repair NYC, Inc. ("Sidewalk"). *See* Dkt. No. 63. Progressive's request for an order declaring that neither Sidewalk nor Eden has coverage under the specified commercial auto liability policy Progressive issued to Sidewalk and that Sidewalk and Eden be precluded from asserting claims under the policy against Progressive implicates various claims asserted by the active litigants in this case. Thus, entering such a judgment at this stage creates a risk of inconsistent judgments.

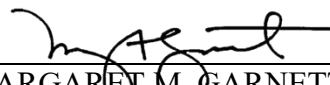
Because the case involves multiple defendants, entry of a default instead of a default judgment is, in the Court's view, more appropriate at this juncture. *See Diarama Trading Co. Inc. v. J. Walter Thompson, U.S.A., Inc.*, 01 Civ. 2950 (DAB), 2002 WL 31545845, at \*4 (S.D.N.Y. Nov. 13, 2002). The Clerk of Court has issued certificates of default against Eden and Sidewalk. *See* Dkt. No. 74.

In light of this, the Court hereby DENIES Plaintiff's application for a default judgment without prejudice to renewal upon resolution of the remaining claims involving the active litigants in this case. In the meantime, the Clerk's certificates of default will "preclud[e] [Eden and Sidewalk], from February 19, 2025 forward, from arguing the merits of the claims made against them." *Diarama Trading Co. Inc.*, 2002 WL 31545845, at \*4.

The Clerk of Court is directed to terminate Dkt. No. 63.

Dated: February 24, 2025  
New York, New York

SO ORDERED.

  
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MARGARET M. GARNETT  
United States District Judge